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TECHNOLOGY CENTER 2600

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In re Application of :
Paul Marko, et al. :
Application No. 09/318,031 :
Filed: May 25, 1999 :
For: **INTEROPERABLE SATELLITE** :
DIGITAL AUDIO RADIO SERVICE (SDARS) :
RECEIVER ARCHITECTURE

DECISION ON PETITION

This is a decision on the Request to Withdraw the Holding of Abandonment filed March 10, 2005 (duplicate copy filed March 25, 2005), which is being treated as a Petition to Withdraw the Holding of Abandonment pursuant to 37 C.F.R. § 1.181(a). No fee is required.

This application became abandoned for failure to timely reply to a "Notice of Non-Compliant Amendment (37 CFR 1.121)" mailed January 15, 2002. No Notice of Abandonment has been mailed.

Petitioner alleges to have timely filed a proper response, by facsimile on February 7, 2002. In support, petitioner has provided as evidence, a copy of the response and a copy of a facsimile "activity report". A copy of a previous response filed with Certificate of Mailing dated August 14, 2001 and a copies of "Auto-Reply Facsimile Transmission" for communications previously filed on March 10, 2005 and November 17, 2003 were also provided.

37 C.F.R. § 1.8 Certificate of mailing or transmission states in part:

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated. [emphasis added]

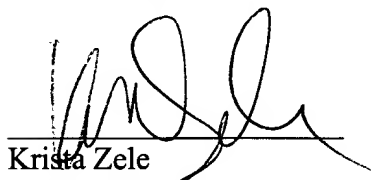
A review of the correspondence submitted with the request to withdraw holding of abandonment finds evidence of a PTO "Auto-Reply Facsimile Transmission" for correspondence filed on November 17, 2003 and a "Transmittal Form with a Certificate of Mailing" for correspondence filed on August 14, 2001. **However, the copy of the February 7, 2001 response does not include a "Transmittal Form" or any certificate of transmission. Furthermore, although the facsimile transmittal sheet appears to have used a facsimile number that may have been associated with the U.S. Patent and Trademark Office, it does not reflect the Office's official facsimile number.** It is noted that the Activity Report (page 2/36 of the March 10, 2005 request) reflects transmission of 12 pages to an unofficial PTO number; but there is no evidence as to what 12 pages were transmitted. It is also noted that the "Transmission Report" (page 3/36 of the request filed March 10, 2005) only confirms transmission of 2 pages which appears to be only the coversheet and page 6 of the response. Therefore, it cannot be concluded that a complete copy of the 13 page response to the January 15, 2002 Notice of Non-Compliant was timely filed via facsimile transmission in compliance with the requirements of 37 CFR 1.8(a)(1).

Accordingly, the petition is **DENIED**.

The application file is being forwarded to the examiner for mailing of a Notice of Abandonment.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and must include evidence that a complete copy (e.g. all 13 pages, including cover) of the February 7, 2001 response was filed timely filed in compliance with 37 CFR 1.8(a). Alternatively, petitioner may want to consider filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b).

Petitioner is reminded that the Official Facsimile Number for all incoming correspondence to the Office is (703) 872-9306. Petitioner may want to note this number in order to avoid any future correspondence problems.



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